

ORDER PASSED BELOW EXHIBIT NO.41
IN R.C.S. NO.102/2014

The plaintiffs have filed instant application under Order-VI, Rule-17 of the Code of Civil Procedure, 1908 for amendment of plaint.

02. By this application, the plaintiffs have contended that, they have instituted the present suit for partition and perpetual injunction restraining the defendants from making alienation of the suit property to the third party. They have also sought the relief of declaration in respect of the alleged sale deeds of the defendant No. 5 to 7. It is contended that, in spite of pending of this suit defendants Nos. 5 to 7 have unlawfully made transaction in respect of suit 1-A property with Nakusa Rangarao Patil. Therefore, plaintiffs have come to the knowledge about said sale deed dated 06.09.2014. Thus, by the proposed amendment, the plaintiffs wants to add Sou. Nakusa Rangrao Patil in the array of the defendants. So also the plaintiffs have want to add pleading in respect of the sale deed dated 06.09.2014 by defendant No. 5 to 7 in favour of said Nakusa Patil. It is contended that, the proposed amendment is necessary for the purpose of effectively adjudicate upon the dispute involved in the present suit and the same will not change the basic structure of the suit. Thus, the plaintiffs have prayed to allow the proposed amendment.

03. The defendants have objected the instant application by filing their say at Exh. 42. They have resisted mainly on the grounds that the proposed amendment will change the nature of suit. The plaintiffs have filed present suit on 27.03.2014 and present defendants have filed their written statement on 17.07.2015. The

defendants have specifically pleaded about the transaction in between them and said Nakusa Patil. Thereafter also the plaintiffs have not sought any relief against said Nakusa Patil nor against sale deed dated 06.09.2014. Therefore, the plaintiffs have not due diligence in respect of this application. Hence, the defendants have prayed for rejection of the instant application with the cost of Rs. 10000/-.

04. I have heard the learned advocates for the respective parties at length.

05. Considering the rival contentions between the parties, the following points arise for my determination and I have recorded my findings thereon with reasons as under.

<u>SR.NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether the proposed amendment ... will change the nature of suit ?	<u>NO.</u>
2)	Whether the proposed amendment is ... necessary for the proper adjudication of the matter ?	<u>YES.</u>
3)	What order ?	... <u>AS PER FINAL ORDER.</u>

:- REASONS :-

AS TO POINT NOS.1 TO 3 :-

06. Before adverting to the merits of the instant application, it is required to mention here that in view of the provision of Order VI, Rule 17 of the Civil Procedure Code, where the amendment does not alter the nature of the suit or nor substitute the cause of action, then it is always open for the Court to allow the amendment of the

pleading at any stage of the proceeding, provided that no prejudice is caused to the other side which can not be compensated by the cost. The object of the amendment is to avoid the multiplicity of the proceedings.

07. On the touchstone of the aforesaid legal aspect, if the instant application is considered, it is seen that the plaintiffs have instituted present suit for partition and perpetual injunction. The plaintiffs have also seek relief of declaration in respect of the transaction of defendant Nos.5 to 7. Thus, it is seen that it is the specific case of the plaintiffs that the defendants have unlawfully made transactions of the suit property before partition by meets and bounds. The plaintiffs have also challenged the sale deed of defendant No. 5 to 7 by seeking relief of declaration. The plaintiffs have contended that, in spite of pendency of this suit defendant No. 5 to 7 have unlawfully made transaction with Sou. Nakusa Rangarao Patil in respect of suit 1-A property. On perusal of written statement it is seen that defendant No. 5 to 7 have admitted transaction of suit property with Sou. Nakusa Rangarao patil. Accordingly, the plaintiffs have come to know the same transaction after written statement of the defendants. Therefore according to the plaintiffs the said Nakusa Rangaro Patil is the necessary party to the present suit. Therefore, they have prayed for addition of the parties with pleading in respect of transaction between defendant No. 5 to 7 with the said Nakusa Rangarao Patil.

08. Therefore, by way of proposed amendment, the plaintiffs have wants to clarify the transaction in between defendant No. 5 to

7 and Sou. Nakusa Rangarao Patil which was took place during the pendency of this suit. Admittedly said transaction was took place during the pendency of this suit. Therefore, considering the basic nature of the suit, said Nakusa Rangarao Patil prima facie necessary party to the suit. If this being a position, I find that the proposed amendment is in the nature of clarification and considering the nature of dispute, the same is necessary in order to effectively adjudicate upon the dispute involved in the suit. It will also not change the basic structure of the suit and will not cause any prejudice to the defendants.

09. Thus, for the reasons stated supra, I hold that the proposed amendment is required to be allowed. Hence, I answer point Nos.1 and 2 accordingly and in answer to point No.3, I proceed to pass the following order.

ORDER

- 1) Application at Exhibit 41 is allowed subject to cost of Rs. 200/- (Rs.Two hundred only) and cost to be paid to the defendant Nos. 5 to 7.
- 2) The plaintiffs shall carry out the proposed amendment within the period of fourteen days from the date of this order.
- 3) The plaintiffs shall also file the appropriate amended copy of the plaint.

Sd/-

(S.M.Jadhav),

2nd Jt. Civil Judge, Junior Division,
Peth-Vadgaon.

Date 05.06.2018

CERTIFICATE.

I affirm that the contents of this P.D.F. file Judgment are same, word to word, as per the original Judgment.

Name of the Stenographer	:-	Sou. Rajashari Rajendra Sawant(L.G.)
Name of Court	:-	Shri.S.M.Jadhav 2 nd Jt.Civil Judge, Jr.Dn., and J.M.F.C. Peth-Vadgaon.
Date of Dictation	:-	05.06.2018.
Judgment signed by the P.O. on	:-	05.06.2018.
Judgment uploaded on	:-	18.06.2018.